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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/490,867	01/24/2000	Sam E. Kinney JR.	ARIBP050	7744
21912 7590 10/15/2008 VAN PELT, YI & JAMES LLP 10050 N. FOOTHILL BLVD #200 CUPERTINO, CA 95014				
EXAMINER				
GREIMEL, JOCELYN				
ART UNIT		PAPER NUMBER		
3693				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/490,867

**Applicant(s)**

KINNEY, SAM E.

**Examiner**

JOCELYN GREIMEL

**Art Unit**

3693

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 16-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/IC)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

## **DETAILED ACTION**

This Non-final Rejection is in response to Applicant's Arguments and Remarks filed 23 June 2008.

### ***Status of Claims***

Claims 1-10 and 16-20 are currently pending. No claims are currently amended. Claims 1-10 and 16-20 were elected for prosecution on 27 December 2007. Claims 1, 6 and 16 are independent claims.

### ***Response to Arguments***

Applicant's arguments filed 23 June 2008, with respect to the rejection(s) of claim(s) 1-10 and 16-20 under 35 U.S.C. 102(b) as being anticipated by Johnson et al. (WO 98/38844) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made below.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 1-10 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. (WO 98/38844, hereinafter Johnson) in view of Carlton-Foss (US Patent No. 6,647,373 B1).** In reference to claims 1, 6 and 16, Johnson discloses a method, system and apparatus for a Dutch auction between a plurality of potential bidders, comprising:

- a. generating a sequence of price values for a comparative bid parameter that is used by an originator of the auction, said sequence of price values being used to create a first view of the Dutch auction for the originator of the auction (page 16+);
- b. selecting a price value in said sequence of price values; for at least a first potential bidder, transforming, using a characteristic of an auction item of a first type, said selected price value into a first bidder comparative bid parameter value that is used to create a second view of the Dutch auction for said first potential bidder, wherein said second view is associated with the auction item of the first type (page 16; page 28; page 31; figures 3-4);

- c. for at least a second potential bidder, transforming, using a characteristic of the auction item of a second type, said selected price value into a second bidder comparative bid parameter value that is used to create a third view of the Dutch auction for said second potential bidder, wherein said third view is associated with the auction item of the second type that is different from said first type (page 16; page 28; page 31; figures 3-4).

Johnson discloses the above method, which transforms price values using a characteristic of the item. Johnson does not disclose the above method, system and apparatus for a Dutch auction between a plurality of potential bidders to include wherein the characteristic of the auction item of the first type is associated with the quality of the item of the first type. However, Carlton-Foss discloses wherein the characteristic of the auction item of the first type is associated with the quality of the item of the first type (background; para. 8-14 and 29). It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to have modified the auction method of Johnson to include transforming price values using characteristics of an item, including quality as a characteristic as it would give the user more options making the system more user-friendly and efficient.

2. In reference to claims 2-5, 7-10 and 17-20, Johnson and Carlton-Foss discloses a method, system and apparatus for a Dutch auction between a plurality of potential bidders (as detailed above), additionally comprising:

- a. wherein generating a sequence of price values comprises predefining a series of price increments or decrements (page 15-16);
- b. wherein generating a sequence of price values further comprises changing said predefined series of price increments or decrements in real-time during the Dutch auction (at least page 15);
- c. wherein transforming, using a characteristic of an auction item of a first type comprises performing one of a linear transformation, non-linear transformation, and lookup table transformation (page 16+);
- d. wherein transforming, using a characteristic of an auction item of a first type comprises performing a combination of linear, non-linear, and lookup table transformations simultaneously (page 16+).

Johnson discloses the above method (please see evaluation of independent claims 1, 6 and 16 above), which transforms price values using a characteristic of the item. Johnson does not disclose the above method, system and apparatus for a Dutch auction between a plurality of potential bidders to include wherein the characteristic of the auction item of the first type is associated with the quality of the item of the first type. However, Carlton-Foss discloses wherein the characteristic of the auction item of the first type is associated with the quality of the item of the first type (background; para. 8-14 and 29). It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to have modified the auction method of Johnson to include transforming price values using characteristics of an item, including quality as a

characteristic as it would give the user more options making the system more user-friendly and efficient.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Walker et al. 6,108,639 A.

Plate et al. 2001/0047322 A1.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOCELYN GREIMEL whose telephone number is (571)272-3734. The examiner can normally be reached on Monday - Friday 8:30 AM - 4:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jocelyn Greimel  
Examiner, Art Unit 3693  
October 8, 2008

/Stefanos Karmis/  
Primary Examiner, Art Unit 3693